

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DOUGLAS A. TURNS,

Petitioner,

v.

UNITED STATES OF AMERICA,

**Case No. 2:04-CV-769
Crim. No. 2:99-CR-104(1)
JUDGE GRAHAM
Magistrate Judge KING**

Respondent.

OPINION AND ORDER

On August 2, 2005, the Magistrate Judge issued a *Report and Recommendation* recommending that an evidentiary hearing be held as to petitioner's claim that he was denied the effective assistance of counsel due to his attorney's failure to call alibi witnesses, and petitioner's claim that he was denied the effective assistance of counsel because his attorney failed to advise petitioner that he could plead guilty without testifying against the co-defendant's in this case. The Magistrate Judge recommended that the remainder of petitioner's claims be dismissed.

Both respondent and petitioner have filed objections to the Magistrate Judge's *Report and Recommendation*. Respondent objects solely to the Magistrate Judge's recommendation that an evidentiary hearing be held on petitioner's claim that he was denied the effective assistance of counsel because his attorney failed to advise him that he could plead guilty without testifying against co-defendants in this case. Petitioner objects to the Magistrate Judge's recommendation that, with the exception of his two ineffective assistance of counsel claims described above, the remainder of his claims be dismissed on the merits.

Pursuant to 28 U.S.C. 636(b)(1), this Court has conducted a *de novo* review of those portions

of the *Report and Recommendation* objected to. For the reasons discussed at length in the Magistrate Judge's *Report and Recommendation*, respondent's objections and petitioner's objections are **OVERRULED**. Petitioner's objection to the Magistrate Judge's August 9, 2005, order granting respondent an extension of time to file objections (Doc. No. 151) is **OVERRULED**.

The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. All of petitioner's claims are **DISMISSED**, with the exception of his petitioner's claim that he was denied the effective assistance of counsel due to his attorney's failure to call alibi witnesses, and his claim that he was denied the effective assistance of counsel because his attorney failed to advise petitioner that he could plead guilty without testifying against the co-defendant's in this case. As to these claims, an evidentiary hearing will be held. Petitioner is **APPOINTED** counsel for purposes of the evidentiary hearing.

IT IS SO ORDERED.

s/James L. Graham
JAMES L. GRAHAM
United States District Judge

DATE: August 25, 2005